

Part 1 General Provisions

49-23-101 Title.

This chapter is known as the "New Public Safety and Firefighter Tier II Contributory Retirement Act."

Enacted by Chapter 266, 2010 General Session

49-23-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:
 - (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;
 - (v) a lump-sum payment or special payment covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
 - (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.
- (2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.
- (4) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), (d), and (e).
 - (a) Except as provided in Subsection (4)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (4)(a) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date

of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

- (d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
- (e) The annual compensation used to calculate final average salary shall be based on:
 - (i) a calendar year for a member employed by a participating employer that is not an educational institution; or
 - (ii) a contract year for a member employed by an educational institution.
- (5)
 - (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department; or
 - (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal.
 - (b) "Firefighter service" does not include secretarial staff or other similar employees.
- (6) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.
- (7)
 - (a) "Line-of-duty death" means a death resulting from:
 - (i) external force, violence, or disease occasioned by an act of duty as a public safety service or firefighter service employee; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service or firefighter service employee.
 - (b) "Line-of-duty death" does not include a death that:
 - (i) occurs during an activity that is required as an act of duty as a public safety service or firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (iv) occurs in a manner other than as described in Subsection (7)(a).
- (8) "Participating employer" means an employer which meets the participation requirements of:
 - (a) Sections 49-14-201 and 49-14-202;
 - (b) Sections 49-15-201 and 49-15-202;
 - (c) Sections 49-16-201 and 49-16-202; or
 - (d) Sections 49-23-201 and 49-23-202.
- (9)
 - (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:
 - (i) law enforcement officer in accordance with Section 53-13-103;
 - (ii) correctional officer in accordance with Section 53-13-104;
 - (iii) special function officer approved in accordance with Sections 49-15-201 and 53-13-105;
 - (iv) dispatcher who is certified in accordance with Section 53-6-303; and
 - (v) full-time member of the Board of Pardons and Parole created under Section 77-27-2.

- (b) Except as provided under Subsections (9)(a)(iv) and (v), "public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.
- (10) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.
- (11)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (12) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.
- (13)
 - (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:
 - (i) has been trained in firefighter techniques and skills;
 - (ii) continues to receive regular firefighter training; and
 - (iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.
 - (b) An individual that volunteers assistance but does not meet the requirements of Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.
- (14) "Years of service credit" means:
 - (a) a period, consisting of 12 full months as determined by the board; or
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

Amended by Chapter 227, 2016 General Session

49-23-103 Creation of system.

- (1) There is created for members employed by a participating employer the "New Public Safety and Firefighter Tier II Contributory Retirement System."
- (2) The New Public Safety and Firefighter Tier II Contributory Retirement System includes:
 - (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and
 - (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Enacted by Chapter 266, 2010 General Session

49-23-104 Creation of trust fund.

- (1) There is created the "New Public Safety and Firefighter Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Enacted by Chapter 266, 2010 General Session